STATE OF CALIFORNIA – DEPARTMENT OF INSURANCE
TITLE 10, CHAPTER 5, SUBCHAPTER 3, CALIFORNIA CODE OF REGULATIONS
TO ADD
ARTICLE 12.1, HEALTH CARE LANGUAGE ASSISTANCE PROGRAM
ADOPTED TEXT OF PROPOSED REGULATIONS

Article 12.1. HEALTH CARE LANGUAGE ASSISTANCE PROGRAM

§2538.1. Authority and Purpose

(a) These regulations are promulgated pursuant to authority granted to the Insurance Commissioner under the provisions of California Insurance Code sections 10133.8 and 10133.9 to establish standards and requirements to provide insureds, free of charge, with appropriate access to translated written materials and oral interpretation services in obtaining covered benefits. These regulations are applicable to all individual and group policies of health insurance and to all health insurers, as defined in section 106 of the California Insurance Code. Every health insurer shall comply with the requirements and standards established by Insurance Code sections 10133.8 and 10133.9 and these regulations.

(b) The purpose of these regulations is to accomplish maximum accessibility to language assistance services by limited English proficient insureds, including oral interpretation and written translation assistance and to set forth: a) the methods of surveying the language preferences and linguistic needs of insureds; b) the requirements, standards and quality assurance for translation of vital documents; c) the requirements, standards and quality assurance for individual access to oral interpretation services; and d) the reporting and data collection requirements for health insurers.

NOTE: Authority cited: Section 10133.8 and 10133.9, California Insurance Code.
Reference: Section 10133.8 and 10133.9, California Insurance Code.

§2538.2 Definitions

For the purposes of these regulations, the following definitions apply:

(a) "Demographic profile" means, at a minimum, primary/preferred spoken and written language of insureds, race and ethnicity.

(b) "Indicated/threshold language(s)" means the language(s) identified by a health insurer pursuant to California Insurance Code section 10133.8 and these regulations into which vital documents shall be translated.

(c) "Individual access to interpretation services" means an insured's ability to receive oral interpretation services in their primary/preferred language in the provision of their health care.

(d) "Interpreting" or "interpretation" means the process of listening, understanding and analyzing something spoken or reading something written in one language (source language) and orally re-expressing that message faithfully, accurately and objectively in another spoken language (target language), taking the cultural and social context into account.

(e) "Language assistance services" means oral interpreting and written translation services provided free of charge to insureds.

(f) "Language preferences and linguistic needs assessment" means assessing and determining the spoken and written language preferences of the insured population.

(g) "Limited English Proficiency (LEP)" means a limited ability or inability to speak, read, write, or understand the English language at a level that permits the insured to interact effectively with his or her health care providers or health insurers.

(h) "Point(s) of Contact" means an instance in which an insured accesses the services covered under a health insurer's policy or certificate, including administrative and clinical services, telephonic and in-person contacts.

(i) "Remote interpreting" means interpreting provided by an interpreter who is not in the presence of the speaker, e.g., interpreting via telephone or videoconferencing.

(k) "Translating" or "translation" means the conversion of a written text in one language into a written text in a second language corresponding to and equivalent in meaning to the text in the first language.

(l) "Vital Documents" includes but is not limited to the following documents when produced by the health insurer including when the production or distribution is delegated by the health insurer to a third party:

(1) Applications;
(2) Consent forms, including health insurer authorization forms;
(3) Letters containing important information regarding eligibility and participation criteria;
(4) Notices pertaining to the denial, reduction, modification, or termination of services and benefits, and the right to file a complaint or appeal;
(5) Notices advising LEP persons of the availability of free language assistance and other outreach materials that are provided to insureds;
(6) An insurer's explanation of benefits or claims processing information that is sent to an insured if the document requires a response from the insured;
(7) A matrix of the categories of health insurance benefits outlined in the insurance contract including co-payments and coinsurance, exclusions and limitations in the following sequence: deductibles; lifetime maximums; professional services; outpatient services; hospitalization services; diagnostic and therapeutic radiological services; preventive health services; emergency health care coverage including ambulance services; prescription drug coverage; durable medical equipment; mental health services; chemical dependency services; home health services; other services.

NOTE: Authority cited: Section 10133.8 and 10133.9, California Insurance Code.
Reference: Section 10133.8 and 10133.9, California Insurance Code.

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§ 2538.3 Language Assistance Program

(a) By January 1, 2008, every health insurer shall develop and implement a Language Assistance Program (LAP) that complies with the requirements of Insurance Code sections 10133.8 and 10133.9 and this regulation. The Commissioner shall allow health insurers a reasonable degree of flexibility in the methods by which they achieve compliance.

(b) The LAP shall be documented in comprehensive written policies and procedures that describe, at a minimum, the following four elements: assessment of insureds; provision of language assistance services; staff training; and compliance monitoring.
  (1) Informing insureds of the availability of language assistance services at no charge to insureds and how to access those services;
  (2) Notifying contracting providers of the LAP requirements for provision of language assistance services;
  (3) Surveying the language preferences and assessing the linguistic needs of the insured population including the methodology for collection of relevant data;
  (4) Translation of vital documents into the indicated/threshold languages including standards to ensure the quality and accuracy of the written translation;
  (5) Provision of individual access to interpretation services including standards to ensure the quality and timeliness of oral interpretation services;
  (6) Provision of adequate and ongoing training regarding the LAP for all staff who have contact with LEP persons. The training shall include instruction on, among other things, the health insurer's policies and procedures for language assistance, working effectively with LEP persons, working effectively with in-person and telephonic interpreters, and, cultural differences among and diversity of the health insurer's insured population; and,
  (7) Evaluation of the health insurer's Language Assistance Program including an analysis of complaints and satisfactions surveys.

(c) Health insurers shall develop a written notice that discloses the availability of language assistance services to insureds and explains how to access those services. A copy of this notice shall be included with all vital documents and all new and renewing insured welcome packets or similar correspondence from the health insurer confirming a new or renewed enrollment. The notice described above shall be translated into the threshold languages; however, nothing in this section shall prohibit an insurer from translating the notice into additional languages. The Commissioner may develop a notice advising LEP insureds of the availability of language assistance services and how to access those services. Health insurers shall provide the notice developed by the Commissioner to their insureds on an annual basis.

(d) Health insurers shall require compliance with their language assistance program developed pursuant to these regulations by every contractor, health care provider, and any network that is contracted to provide health care to insureds. Health insurers who directly contract with health care providers or who lease networks of health care providers shall use these contracts to implement the specific provisions of the health insurer's Language Assistance Program, seeking amendments to such

contracts as needed within a reasonable time of the effective date of these regulations. Health insurers shall retain financial responsibility for the implementation of the Language Assistance Program except to the extent that delegated financial responsibility has been negotiated separately and incorporated by reference into its contract.

NOTE: Authority cited: Section 10133.8 and 10133.9, California Insurance Code.
Reference: Section 10133.8 and 10133.9, California Insurance Code.

§2538.4 Needs Assessment of Insured Population

(a) Every health insurer shall survey the language preferences and assess the linguistic needs of each insureds within one year of the effective date of these regulations. Health insurers may utilize various survey methods, including, but not limited to, the use of existing enrollment and renewal processes, newsletters, or other mailings. Health insurers shall update the linguistic needs assessment, demographic profile, and language translation requirements of their insured population every three years.

(b) The Language Assistance Program shall describe the health insurer's methods and timelines for surveying and assessing the language preferences and linguistic needs of the insured population, the calculations to be used to determine indicated/threshold languages, the method for collecting, summarizing and reporting the data to the Department, and how the health insurer shall advise limited English proficient insureds of the availability of translation and interpretation services.

NOTE: Authority cited: Section 10133.8 and 10133.9, California Insurance Code.
Reference: Section 10133.8 and 10133.9, California Insurance Code.

§2538.5 Written Translation of Vital Documents

(a) Every health insurer shall translate vital documents, as defined above, into languages other than English, hereinafter called "indicated/threshold languages" as follows:

(1) A health insurer with an insured population of 1,000,000 or more shall translate vital documents into the top two languages other than English as determined by the needs assessment and any additional languages when 0.75 percent or 15,000 of the insured population, whichever number is less, indicates in the needs assessment a preference for written materials in that language.
(2) A health insurer with an insured population of 300,000 or more but less than 1,000,000 shall translate vital documents into the top one language other than English as determined by the needs assessment and any additional languages when 1 percent or 6,000 of the insured population, whichever number is less, indicates in the needs assessment a preference for written materials in that language.
(3) A health insurer with an insured population of less than 300,000 shall translate vital documents into a language other than English when 3,000 or more or five percent of the insured

population, whichever number is less, indicates in the needs assessment a preference for written materials in that language.

(b) For those vital documents that contain insured-specific information, health insurers shall provide the English language document together with a written notice of the availability of interpretation services and translation services in the indicated/threshold languages identified by the needs assessment.
   (1) Upon request, the insured shall receive a written translation of the documents. The health insurer shall have 21 (twenty-one) days after receipt of the request to provide the written translation to the insured.
   (2) Whenever a requested document requires that an insured take action within a certain period of time, that period of time shall not begin to elapse until the health insurer issues to the insured a translation of that document in accordance with the provisions of this article. For appeals that require expedited review and response, the health insurer may satisfy this requirement by providing notice of the availability and access to oral interpretation services.

(c) Health insurers may implement the translation of vital documents in phases by submitting a written request to the Commissioner detailing their plan, timeframe, rationale and projected impact on the receipt of culturally and linguistically competent health care by insureds. Phase-in shall not begin until the plan is approved by the Commissioner.

(d) Every health insurer shall develop policies and procedures to ensure the quality and accuracy of written translations and that each translated document meets the same standards as are required for the English version of the document. The policies and procedures shall include mechanisms for ensuring the proficiency of the individual providing translation services, including a documented and demonstrated proficiency in the source and target languages and knowledge of applicable specialized terminology in both the source and target languages.

(e) This section is not intended to prohibit or discourage a health insurer from providing translation of vital documents into a greater number of languages than the indicated/threshold languages.

NOTE: Authority cited: Section 10133.8 and 10133.9, California Insurance Code.
Reference: Section 10133.8 and 10133.9, California Insurance Code.

§2538.6 Individual Access to Oral Interpretation Services

(a) Every health insurer shall provide timely individual access to interpretation services at no cost to LEP insureds at all points of contact where language assistance is needed in accordance with these regulations. For purposes of this section, "timely" means in a manner appropriate for the situation in which language assistance is needed. Interpreter services are not timely if delay results in the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP insured.

(b) Every health insurer shall develop policies and procedures that describe the health insurer's methods for providing timely interpretation services, including, but not limited to the following:

(1) The points of contact where the need for interpreting may be reasonably anticipated;
(2) The types of resources necessary in order to provide effective interpreting to the health insurer's insureds;
(3) The arrangements that the health insurer will make to inform insureds of oral interpretation services and to provide timely access to interpreting at all points of contact at no charge to insureds;
(4) The range of interpreting services that will be provided to insureds as appropriate for the particular point of contact. The range of services may include, but is not limited to:
(A) Bilingual health insurer or contractor/health care provider staff available for the duration of the need;
(B) Hiring staff interpreters;
(C) Contracting with outside interpreters;
(D) Making volunteer interpreters available; and
(E) Contracting for remote interpreting, as defined, for an LEP person.

(c) Every health insurer shall develop policies and procedures for the use of family, friends, and minors as interpreters. The intent of these regulations is to provide qualified interpreting for all LEP insureds, in their primary/preferred spoken language, at no cost to the LEP insureds at all points of contact where language assistance is needed. It is the intent of these regulations to discourage the use of family members and friends and strongly discourage the use of minors as interpreters; however, nothing in this section is intended to create a barrier to care for LEP insureds.

(1) In a non-emergency situation, an insured may request the use of a family member or friend as the interpreter. Once the insured has requested the use of a family member or friend as his or her interpreter, the insured shall be fully informed in his or her primary/preferred spoken language that a qualified interpreter is available at no charge to the insured. If the insured refuses the offer of the qualified interpreter, the offer of a qualified interpreter and the insured's decision to use the family member or friend as the interpreter shall be documented in the medical record file.

(2) In an emergency situation, a minor may be used as an interpreter if the following conditions are met:
(A) The minor demonstrates the ability to interpret complex medical information in an emergency/critical situation; and,
(B) The insured is fully informed in his or her primary/preferred spoken language that a qualified interpreter is available at no charge to the insured. If the insured refuses the offer of the qualified interpreter, the offer of a qualified interpreter and the insured's decision to use the minor as the interpreter shall be documented in the medical record file.

(d) Every health insurer shall develop policies and procedures to ensure the quality and timeliness of oral interpretation services provided to insureds. The policies and procedures shall include mechanisms for ensuring the proficiency of the individual providing interpretation services, including a documented and demonstrated proficiency in the source and target languages, sensitivity to the LEP person's culture and a demonstrated ability to convey information accurately in both languages. A health insurer may develop and apply appropriate criteria for ensuring the proficiency of interpreter services or may adopt certification by an association acceptable to California or federal regulators at the time of certification.

NOTE: Authority cited: Section 10133.8 and 10133.9, California Insurance Code.
Reference: Section 10133.8 and 10133.9, California Insurance Code.

§2538.7 Health Insurer Monitoring, Evaluation & Reporting

(a) Every health insurer shall monitor the implementation and provision of its Language Assistance Program and make modifications as necessary to ensure compliance with Insurance Code sections 10133.8 and 10133.9 and these regulations. The health insurer's policies and procedures shall include a description of the health insurer's method of (1) monitoring health insurer, contractor, health care provider, and network compliance with the health insurer's standards for the Language Assistance Program, including the availability, quality and utilization of language assistance services, (2) tracking grievances and complaints related to its Language Assistance Program, and (3) documenting actions taken to correct problems.

(b) Every health insurer shall evaluate the effectiveness of its Language Assistance Program with regard to the following:

(1) Assessing indicated/threshold language(s) based on data collected;
(2) Assessing current language assistance needs of its insureds who are LEP persons;
(3) Documenting and responding to requests for translation and interpretation services;
(4) Whether the existing Language Assistance Program meets the needs of its insureds who are LEP insureds;
(5) Whether health insurer staff know the health insurer's policies and procedures and how to implement them;
(6) Whether the resources and arrangements for language assistance identified in the health insurer's policies and procedures are still current and available; and
(7) Responding to communications from insureds, including via surveys and complaints.

(c) Within one year after the health insurer's initial assessment, every health insurer shall report to the Department of Insurance on the implementation of its Language Assistance Program and its internal policies and procedures related to cultural appropriateness. This information and data requested by the Department shall be submitted in a timely manner. Health insurers who do not report in a timely manner shall be subject to fines and penalties as authorized by the Insurance Code. Each health insurers shall report at least the following information:

(1) The data regarding the insured population based on the needs assessment as required by paragraph (2) of subdivision (b) of Insurance Code section 10133.8;
(2) The education of health insurer staff who have routine contact with insureds regarding the diverse needs of the insured population;
(3) The health insurer's recruitment and retention efforts that encourage workforce diversity;
(4) An evaluation of the health insurer's language assistance programs and services with respect to the health insurer's insured population, using processes such as an analysis of complaints and satisfaction survey results;
(5) The periodic provision of information regarding the ethnic diversity of the health insurer's insured population and any related strategies to health insurer's providers. Health insurers may use existing means of communication;
(6) The periodic provision of educational information to insureds on the health insurer's services and programs.

NOTE: Authority cited: Section 10133.8 and 10133.9, California Insurance Code.
Reference: Section 10133.8 and 10133.9, California Insurance Code.

§2538.8 Department of Insurance Reporting

Beginning on January 1, 2008, the Department shall report biennially to the Legislature regarding health insurer compliance with the standards established by Insurance Code section 10133.8 and these regulations including results of compliance audits made in conjunction with other audits and reviews. The Commissioner shall ensure that the reports required by this section as well as the data collected from health insurers for the reports do not require duplicative or conflicting data collection from health insurers. The Commissioner shall use the reported information from health insurers to make recommendations to health insurers for changes to their Language Assistance Program, including the development of forms to notify insureds of their rights under these regulations and to further promote the purpose of these regulations.

NOTE: Authority cited: Section 10133.8 and 10133.9, California Insurance Code.
Reference: Section 10133.8 and 10133.9, California Insurance Code.